

REMARKS***Summary of the Amendment***

Upon entry of the above amendment, claims 1, 13, 16, and 30 will have been amended.

Accordingly, claims 1 – 30 currently remain pending.

Summary of the Official Action

In the instant Office Action, the Examiner has indicated that claims 22 – 27 contain allowable subject matter and would be allowable if presented in independent forms that include the features of their respective base claims. Further, the Examiner has objected to an informality in claim 30 and rejected claims 1 – 21 and 28 – 30 over the applied art of record. By the present amendment and remarks, Applicants submit that the objections and rejections have been overcome, and respectfully request reconsideration of the outstanding Office Action and allowance of the present application.

Summary of Telephone Interview with Examiner Maust

Applicants gratefully acknowledge the courtesy extended to their representative by Examiner Maust in conducting a telephone interview on April 29, 2010. In the interview, Applicants' representative pointed out that the applied art fails to disclose or suggest a ground connection, and suggested an amendment which included reciting the ground connection. Applicants identified certain portions of the original disclosure discussing the ground connection and take this opportunity to more clearly note that Applicants' disclosure at least the second full paragraph on page 9; and the bridging paragraph on pages 9 and 10 discloses a ground connection located in a vicinity of an outlet of a filling pipe; and the first and second full paragraphs on page 10; and the bridging paragraph on pages 10 and 11 discloses a ground connection connected to the filling body (electrically conducting stretched material).

The Examiner acknowledged that, while it was not apparent that the applied art of record discloses or suggests a ground connection, upon submission of Applicants' amendment, a further search would be conducted for the amended claims. Accordingly, claims 1, 13, and 16 have been amended to more clearly define the subject matter of the invention, which now recites a ground connection.

Acknowledgment of Allowable Subject Matter

Applicants gratefully acknowledge the Examiner's indication that claims 22 – 27 contain allowable subject matter and would be allowable if presented in independent forms that include the features of their respective base claims. Accordingly, Applicants' have presented original claim 22 into the independent form indicated as allowable by the Examiner in the pending action.

In view of the foregoing, Applicants request that the Examiner reconsider and withdraw the objection to claims 22 – 27, and indicate that these claims are allowable.

Objection Based Upon Informality is Moot

Applicants submit that the objection to claim 30 based upon an informal matter is moot in view of the pending amendment to claim 30. In this regard, claim 30 has been amended in accordance with the Examiner's suggestion in the pending office action. Accordingly, Applicants request that the Examiner reconsider and withdraw the objection to claim 30 indicate that this claim, and all pending claims, are fully in compliance with the Patent Office Rules.

Traversal of Rejection Under 35 U.S.C. § 102(b)

Applicants traverse the rejection of claims 1, 2, 4 – 11, 13 – 17, 19 – 21, and 28 – 30 under 35 U.S.C. § 102(b) as being anticipated by POSCHINGER (U.S. Patent No. 4,566,589).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union*

Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). *See The Manual of Patent Examining Procedure* [hereinafter “MPEP ”] § 2131. Applicants submit that the applied art does not show each and every element of the claimed invention.

By the present amendment, Applicants independent claim 1 recites, *inter alia*, inserting an electrically conducting stretched material into the container before inserting gas into the container, electrically connecting to an electrical ground and at least one of: the electrically conducting stretched material, and an area in a vicinity of an outlet opening of a filling pipe for inserting the gas into the container; and inserting gas into the container under compression. Applicants’ independent claim 13 recites, *inter alia*, electrically grounding at least one of: the electrically conducting stretched material, and an area in a vicinity of an outlet opening of a filling pipe for inserting a gas into a container; and contacting the electrically conducting stretched material with the gas in the container under a compressed atmosphere. Further, Applicants’ independent claim 16 recites, *inter alia*, an electrically conducting stretched material, and an electrical ground connection located least one of: to the electrically conducting stretched material, and in a vicinity of an outlet of a filling pipe within the gas container.

As discussed with the Examiner during the telephone interview of April 29, 2010, while POSCHINGER discloses a coil of expanded metal (of aluminum or aluminum alloy) within a gas container that acts as a heat conducting and heat dispersing grid, this document fails to disclose an electrical ground connection. More particularly, Applicants submit that POSCHINGER fails to disclose an electrical ground connection to at least the electrically conducting stretched material and/or an area in the vicinity of an outlet in a filling pipe, as now recited in at least independent claims 1, 13, and 16.

As described in Applicants' original disclosure, the ground connection leads an electrical charge occurring during the filling of the container. In contrast to the pending application, Applicants' note that POSCHINGER fails to even suggest electrical charges arising during a filling operation of the container, or the discharging of such charges through an electrical ground connection.

Because the applied art of record fails to disclose at least the above-recited ground connection, Applicants submit that POSCHINGER cannot show each and every recited element of the claims. Thus, Applicants submit that the applied art fails to establish an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. § 102(b), and that the pending rejection is improper and should be withdrawn.

Further, Applicants submit that claims 2, 4 – 11, 14, 15, 17, 19 – 21, and 28 – 30 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicants submit that POSCHINGER fails to anticipate the embodiments of the invention recited in at least claims 2, 4 – 11, 14, 15, 17, 19 – 21, and 28 – 30.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 1, 2, 4 – 11, 13 – 17, 19 – 21, and 28 – 30 under 35 U.S.C. § 102(b) and indicate that these claims are allowable.

Traversal of Rejection Under 35 U.S.C. § 103(a)

I. Over Poschinger in view of Schrenk

Applicants traverse the rejection of claims 3 and 18 under 35 U.S.C. § 103(a) as being unpatentable over POSCHINGER in view of SCHRENK (U.S. Patent No. 4,613,054).

With regard to the pending rejection of the claims under 35 U.S.C. § 103(a), Applicants note the Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, Applicants are under no obligation to submit evidence of non-obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met:

- (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- (2) there must be a reasonable expectation of success; and
- (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP §2142.

Further, while rejecting a *rigid* application of the teaching, suggestion, or motivation (“TSM”) test in an obviousness inquiry, the U.S. Supreme Court acknowledged the importance of identifying “a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does” in an obviousness determination. *Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350, 1356-1357 (Fed. Cir. 2007) (quoting *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1731 (2007)).

Applicants note that, like POSCHINGER, SCHRENK fails to provide any arguable disclosure of generating electrical charges within the container during a filling operation. As a

result, Applicants submit that, as neither applied document of record can even arguably suggest to one ordinarily skilled in the art to include a ground connection to dissipate charges occurring during the filling of the container, no proper combination of these documents can arguably suggest the embodiments of the invention recited in at least independent claims 1 and 16, as currently amended. Moreover, because the applied art fails to disclose or suggest the generation of charges in the container, the applied art fails to provide any articulated reasoning for modifying POSCHINGER to include a ground connection to at least the electrically conducting stretched material and/or an area in the vicinity of an outlet in a filling pipe, as now recited in at least independent claims 1 and 16.

Because neither applied document of record discloses the recited ground connection, Applicants submit that no proper combination of these documents can render unpatentable the combination of features recited in at least independent claims 1 and 16. Further, Applicants submit that claims 3 and 18 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. In particular, Applicants submit that no proper combination of POSCHINGER in view of SCHRENK can render obvious the embodiments of the invention recited in claims 3 and 18.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 3 and 18 under 35 U.S.C. § 103(a) and indicate that these claims are allowable.

2. Over Poschinger

Applicants traverse the rejection of claim 12 under 35 U.S.C. § 103(a) as being unpatentable over POSCHINGER.

As discussed above, POSCHINGER fails to provide any arguable disclosure of generating electrical charges within the container during a filling operation. Because the applied art fails to disclose or suggest the generation of charges in the container, the applied art fails to provide any articulated reasoning for modifying POSCHINGER to include a ground connection to at least the electrically conducting stretched material and/or an area in the vicinity of an outlet in a filling pipe, as now recited in at least independent claim 1. Thus, Applicants submit that one ordinarily skilled in the art reviewing the disclosure of POSCHINGER would find no reasonable rationale for modifying POSCHINGER to include a ground connection, as recited in Applicants' claims, to dissipate charges occurring during the filling of the container, such that there is no basis to suggest that the embodiments of the invention recited in at least independent claim 1 would have been obvious under 35 U.S.C. § 103(a).

Because the applied document of record fails to disclose or suggest a ground connection and also fails to teach or suggest any reasonable rationale for including a ground connection, Applicants submit that no proper modification of POSCHINGER can render unpatentable the combination of features recited in at least independent claim 1. Further, Applicants submit that claim 12 is allowable at least for the reason that it depends from allowable base claims and because it recites additional features that further defines the present invention. Therefore, Applicants submit that no proper modification of POSCHINGER under 35 U.S.C. § 103(a) can render obvious the embodiments of the invention recited in claim 12.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claim 12 under 35 U.S.C. § 103(a) and indicate that these claims are allowable.

Application is Allowable

Thus, Applicants respectfully submit that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. §§ 102 and 103, and respectfully request the Examiner to indicate allowance of each and every pending claim of the present invention.

Authorization to Charge Deposit Account

The undersigned authorizes the charging of any necessary fees, including any extensions of time fees required to place the application in condition for allowance by Examiner's Amendment, to Deposit Account No. 19 - 0089 in order to maintain pendency of this application.

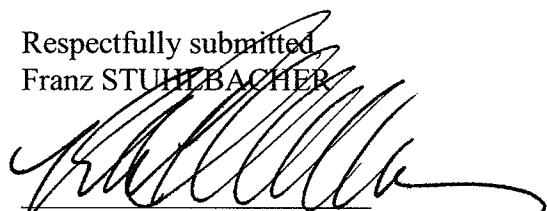
CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicants' invention, as recited in each of claims 1 – 30. The claims have been amended to eliminate any arguable basis for rejection under 35 U.S.C. § 112. In addition, the applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,
Franz STUHLBACHER



Neil F. Greenblum
Reg. No. 28,394

Robert W. Mueller
Reg. No. 35,043

May 3, 2010
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191